

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HUGO CHAVEZ-CADENAS (10),

Defendant.

Case No. 09-20005-10-DDC

MEMORANDUM AND ORDER

This matter comes before the court on defendant Hugo Chavez-Cadenas’s pro se¹ Motion for Leave to Appeal In Forma Pauperis (Doc. 1352). This court denied Mr. Chavez-Cadenas’s Motion for Compassionate Release (Doc. 1337) on August 24, 2021. Doc. 1348 at 10. Mr. Chavez-Cadenas seeks to appeal that decision in forma pauperis to the Tenth Circuit. Doc. 1349 at 1. For the following reasons, the court denies Mr. Chavez-Cadenas’s motion as moot.

“If a person for whom counsel is appointed under [the Criminal Justice Act, or “CJA”] appeals to an appellate court . . . he may do so without prepayment of fees and costs or security therefor[e] and without filing the affidavit required by section 1915(a) of title 28.” 18 U.S.C. § 3006A(d)(7); *see also* Fed. R. App. P. 24(a)(3) (“A party . . . who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization[.]”).² Previously, this court appointed counsel for

¹ Because Mr. Chavez-Cadenas filed the current motion pro se, the court construes his filings liberally and holds them to “a less stringent standard than formal pleadings drafted by lawyers.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). But the court doesn’t become his advocate. *Id.*

² Fed. R. App. P. 24(a)(3)(A) permits a petitioner to “proceed on appeal in forma pauperis without further authorization, unless” the district court “certifies that the appeal is not taken in good faith or finds

Mr. Chavez-Cadenas under the CJA. *See* Docs. 255, 289. The court notes that appointment was in 2009. But Mr. Chavez-Cadenas has provided a new financial affidavit showing that he meets the requirements to proceed in forma pauperis. *See* Docs. 1352-1, 1352-2. So, Mr. Chavez-Cadenas may appeal this action in forma pauperis without any further authorization from this court. *See United States v. Tyner*, 342 F. App'x 415, 418 (10th Cir. 2009) (denying motion to proceed in forma pauperis as moot because defendant's "ifp status Carrie[d] over" from when he "was represented by CJA counsel in the original criminal proceedings and allowed to proceed in forma pauperis in a prior appeal" (citing Fed. R. App. P. 24(a)(3)) (emphasis omitted)); *see also United States v. Wallace*, No. 2:14-cr-218-CW, 2018 WL 3675246, at *1 (D. Utah Aug. 2, 2018) (granting defendant's motion to proceed in forma pauperis on post-conviction motion where the court previously determined he was eligible for CJA appointment in his criminal case and defendant filed a new affidavit showing he met the requirements to proceed in forma pauperis).

The court thus denies Mr. Chavez-Cadenas's motion as moot. The Clerk of the Court is directed to forward a copy of this Order to the Clerk of the Tenth Circuit.

IT IS THEREFORE ORDERED THAT defendant Hugo Chavez-Cadenas's Motion for Leave to Appeal In Forma Pauperis (Doc. 1352) is denied as moot.

IT IS SO ORDERED.

Dated this 7th day of October, 2021, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge

that the party is not otherwise entitled to proceed in forma pauperis[.]” The court doesn't find that Mr. Chavez-Cadenas's appeal manifests bad faith.